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May 17, 2004 RECEIVED

MAY 17 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

RE: Opposition to Petition for Rulemaking – MB Docket 04-84
Willcox, Arizona - Channel 223C3

Dear Ms. Dortch:

Desert West Air Ranchers Corporation, by and through its attorneys, hereby submits this Opposition to the Petition for Rulemaking filed by Calvary Chapel of Tucson in the above-referenced proceeding.

Should there be any questions regarding this Petition, please contact undersigned counsel.

Sincerely,


Susan A. Marshall
Lee G. Petro

Counsel for Desert West Air
Ranchers Corporation

Enclosures

cc: As shown in Certificate of Service

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Before the
Federal Communications Commission
Washington, D.C. 20554

MAY 17 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations

(Willcox, Arizona)

MB Docket No.: 04-84
RM-10879

TO: CHIEF, MEDIA BUREAU

**OPPOSITION TO
PETITION FOR RULEMAKING**

Desert West Air Ranchers Corporation ("Desert West"), by and through its attorneys, hereby submits this Opposition to the reservation of Channel 223C3, Willcox, Arizona, for noncommercial use. Calvary Chapel of Tucson submitted a Petition for Rulemaking on November 20, 2003 (the "Petition"), in response to the *Public Notice*¹ establishing a filing window for reserving existing, vacant commercial FM allotments. On March 26, 2004, the FCC released a Notice of Proposed Rulemaking proposing the reservation of the allotment for NCE use.²

As discussed in the attached Engineering Study of Hatfield and Dawson Consulting Engineers, the Petition must be denied. Specifically, the Engineering Study provided by Calvary Chapel in support of the Petition does not meet the threshold requirement that all NCE reserved channels are technically precluded from operating at Willcox, Arizona. The engineering study provided by Calvary Church erroneously rejected all twenty NCE channels due to the perceived

¹ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003) (the "Public Notice").

² *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Various)*, 19 FCC Rcd 5333 (2004).

interference caused by KUAT-TV, Tucson, Arizona. However, the quick rejection of all twenty reserved channels arbitrarily ignores the possibility that an allotment could be made within the reserved band in compliance with Section 73.525(c) of the Commission's rules. This failure directly undermines the showing prepared by Calvary Chapel, and must result in the dismissal of the Petition.

Therefore, Desert West Air Rancher Corporation respectfully requests that the Commission dismiss or deny the Petition for Rulemaking seeking to reserve Channel 223C3 at Willcox, Arizona.

Respectfully submitted,

DESERT WEST AIR RANCHERS CORPORATION

By: 

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May 17, 2004

EXHIBIT A

ENGINEERING STATEMENT

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Engineering Statement

This Engineering Statement has been prepared on behalf of Desert West Air Ranchers Corp., in support of comments filed in MB Docket No. 04-84. In this proceeding, Calvary Chapel of Tucson ("Calvary" or "Petitioner") has requested that the Commission reserve Channel 223C3 at Willcox, Arizona, for non-commercial use.

In support of their petition, Calvary has failed to fully demonstrate that there are no reserved-band channels available for use at Willcox. Thus, this allotment does not qualify for reservation, and Calvary's reservation request should be denied.

Discussion re Petitioner's Preclusion Study

Petitioner bases its conclusion that no reserved-band channel is available on the simple fact that each of the studied transmitter sites is "inside the KUAT-TV Channel 6 F(50,50), 47 dBuV/m Grade B contour and would cause interference to the TV Channel 6 station. Therefore, it has been demonstrated that all 20 NCE-FM channels would be precluded at this site."

That blanket statement is wholly insufficient to establish that no reserved-band channel is available for use at Willcox. The mere presence of an unspecified area of interference caused to TV Channel 6 does not render a reserved-band channel unusable. In order to reach this conclusion, it would be necessary to demonstrate that the resulting interference area caused to KUAT-TV would encompass in excess of 3,000 persons, as per Section 73.525(c).

If the Petitioner's blithe rejection of all reserved-band channels due to TV Channel 6 interference is disregarded, then their preclusion analysis indicates that:

North Site: Channel 219C3 should be available for use at the North Site with maximum Class C3 facilities

East Site: Channels 203C3, 204C3, 206C3, 207C3, 216C3, and 218C3 should be available for use at the East Site with maximum Class C3 facilities. (Although Channels 216C3 and 218C3 have an apparent conflict with Channel 215C at Safford, Arizona, the Safford "allotment" is merely a placeholder in the US-Mexico FM Agreement and is not entitled to interference protection domestically.)

West Site: Channel 204C3 should be available for use at the West Site with maximum Class C3 facilities. (Although Channel 204C3 has an apparent conflict with Channels 201C and 205A at Douglas, Arizona, the Douglas "allotments" are merely placeholders in the US-Mexico FM Agreement and are not entitled to interference protection domestically.)

By way of example, the relevant 79.5 dBu interfering contour for a Channel 218C3 maximum Class C3 facility at the East Site would encompass just 989 persons, only 676 of which are within the KUAT-TV Grade B contour. This figure would satisfy Section 73.525(c) as a permissible level of interference to KUAT-TV Channel 6. Petitioner has not indicated any other reasons why Channel 218C3 is unavailable for use at Willcox at the East Site. It is very likely that others of the available channels also satisfy Section 73.525(c) with respect to KUAT-TV.

Conclusion

The Petitioner has failed to definitively demonstrate that no reserved-band channel would be available for use at Willcox. Their blanket statement that the presence of KUAT-TV Channel 6 prevents the use of any reserved-band channel is flawed in that it ignores the fact that a reserved-band channel can be used within the Grade B contour of a TV Channel 6 station if the resulting interference area contains less than 3,000 persons.

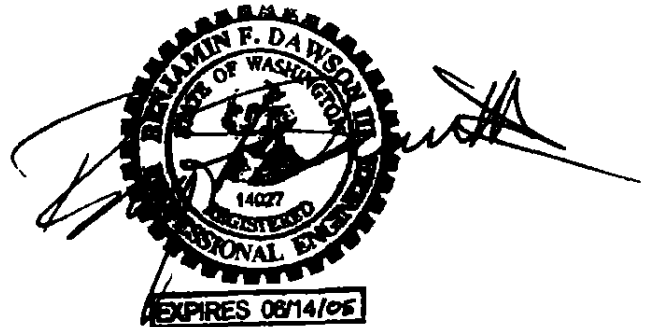
Therefore, the NCE reservation request in MB Docket 04-84 by Calvary Chapel of Tucson must be denied

I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

April 17, 2003



Erik C. Swanson

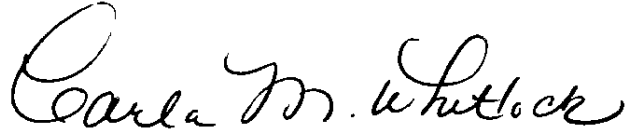


Benjamin F. Dawson III, P.E.

CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Opposition" was sent this 17th day of May, 2004, by first-class United States Mail, postage prepaid to:

David A. O'Connor, Esquire
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006-6801
Counsel for Calvary Chapel of Tucson

A handwritten signature in cursive script that reads "Carla M. Whitlock". The signature is written in black ink and is positioned above a horizontal line.

Carla M. Whitlock